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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

Conservatorship of the Estate of ALFRED
J. BORSTEIN.

B201735

(Los Angeles County
Super. Ct. No. BP082310)

CAROL STEIN et al.,

Petitioners and Respondents,

v.

AMIYA K. GOSWAMI,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Aviva
K. Bobb, Judge. Affirmed.

Amiya Goswami, in pro. per., for Objector and Appellant.

Hinojosa & Wallet, Andrew M. Wallet and Rebekah E. Swan for Petitioners and
Respondents.

Amiya Goswami appeals from a broad permanent injunction issued by the probate court restraining him from taking specified actions concerning assets of the late Alfred J. Borstein, Borstein's trust, and other related entities. Appellant raises multiple challenges to the injunction. He claims the probate court acted in excess of its jurisdiction because he was not served with the temporary restraining order or application for permanent injunction; he was not a party to the probate proceeding; respondents are no longer parties to the conservatorship case; respondent Carol Stein failed to present evidence of her rights to the disputed properties; and the injunction improperly resolved disputes concerning properties located in other states. Appellant also argues the trial court violated his constitutional rights by barring him from filing documents to protect his interests in the disputed properties. He contends the court erred in granting relief in this probate action that, in effect, quieted title to the disputed properties, and he challenges the sufficiency of the evidence supporting the injunction.

We find no basis for reversal and affirm.

FACTUAL AND PROCEDURAL SUMMARY

This is the latest in a series of appeals and writ petitions in which Norma Borstein, and her purported assignee, appellant, have attempted to recover interests in assets of the estate of Alfred J. Borstein which Norma released in a settlement with Alfred's relatives in 2004. Their repeated efforts, both direct and indirect, have created a convoluted procedural history. Since appellant's claims are based on a purported assignment of Norma's rights, we begin with the status of Norma's claims.¹

¹ We grant respondents' request and take judicial notice of the record on appeal in *Borstein v. Stein*, No. B195762. That appeal was from a judgment on the pleadings in Norma's action against Carol Stein and others. We discuss the nonpublished opinion in that case in more detail below. Some of the procedural and factual history in this opinion is taken from the record on that appeal.

A. Alfred's Estate and Assets

Alfred J. Borstein (Alfred) was an elderly attorney with a \$15 million estate. He had created the Alfred J. Borstein Trust (the trust) of which he was trustee. The assets of the trust included Borstein Partners, Ltd, a California Limited Partnership (Borstein Partners). When Borstein Partners was formed in 1997, Alfred was the general partner with a 1 percent interest, and the remaining 99 percent interest was held by Alfred as trustee of the trust.

On August 8, 2003, Alfred modified his estate plan. He appointed Carol J. Stein (his niece) and Alice Ulman (his sister) as cotrustees of the trust. The same day, Borstein Management LLC was created (Borstein Management). The members of Borstein Management were: Carol Stein, Alice Ulman, Selma Seps (Alfred's sister) and James M. Fuller, who acted as managing member. Carol Stein is one of the general managers. Alfred also transferred his 1 percent interest in Borstein Partners to Borstein Management that day. We sometimes refer to the trust, Borstein Partners, and Borstein Management collectively as the Borstein entities.

The trust assets included real properties in California, Arizona, Nevada and Hawaii. These included: (a) 17636-17640 Burbank Boulevard, Encino, lots 3 and 4 (the Burbank property); (b) 5101-5117 West Jefferson Boulevard, Los Angeles, two parcels comprised of lots 170 and 171, and 172 and 173 (the Jefferson property); (c) 2737 East McKellips Road, Mesa, Arizona (the Arizona property); (d) 800 and 812 Shadow Lane, Las Vegas, Nevada (the Nevada property); and (e) Unimproved real property located at S. Ahi Street, Hawaii.

B. Marriage and Conservatorship

Norma Edwards served as Alfred's caregiver for a number of years. She married Alfred in October 2003. On October 30, 2003, Carol Stein and Alice Ulman filed a petition for conservatorship over Alfred on the grounds that he was suffering from dementia. (LASC No. BP082310.) They also filed a petition for the annulment of the marriage between Alfred and Norma. Carol Stein and Alice Ulman were appointed temporary conservators.

C. Settlement between Norma and Alfred's Relatives

Norma reached a settlement agreement with Alfred's relatives on January 14, 2004. The signatories to the settlement included Norma and her attorney, and Alice Ulman, Carol Stein, Selma Seps and James M. Fuller as cotrustees of the Alfred J. Borstein Trust. The settlement agreement was approved by the court in an order granting petition of settlement on March 12, 2004. (We refer to the agreement and order collectively as "the settlement agreement.")

The settlement agreement states that it resolves "all disputed issues related to the Conservatorship of Alfred J. Borstein, the ALFRED J. BORSTEIN TRUST . . . and all issues raised in pleadings filed in Los Angeles Superior Court Case No. BP082310" It provided for the appointment of a professional conservator of Alfred's person and estate. The conservator was given the power to manage Alfred's care and treatment, determine his residence, and control his visitation.

The temporary conservators agreed to dismiss their petition for annulment of the marriage between Alfred and Norma. In consideration for this dismissal, Norma waived all of her rights to Alfred's estate: "Norma waives and relinquishes all further claims to and / or against Alfred's estate, during his life and / or after his death, including but not limited to inheritance rights by way of intestacy, will or trust existing or made in the future, devises and / or bequests, succession rights, spousal support, family allowance, and probate homestead. Further, Norma specifically waives any and all rights to spousal support, either temporary or permanent, in the event of separation or dissolution from Alfred."

D. Norma's Attacks on the Settlement Agreement

Alfred died on March 25, 2004. Beginning in December 2004, Norma instituted multiple attacks on the settlement agreement, direct and indirect. Her motion to set aside the agreement was denied, as was a motion for reconsideration of that order. Norma's appeal from the denial of the motion for reconsideration was dismissed for failure to file

an opening brief. A petition for review to the Supreme Court was denied. The settlement agreement is now final.²

Norma unsuccessfully brought a petition for probate alleging that Alfred died intestate and that she was his heir at law. (*Estate of Alfred J. Borstein* (Super. Ct. Los Angeles County, 2006, No. SP006862).) She also filed a civil action against Carol Stein, Stein's husband, Jay Stein, Alice Ulman, and Selma Seps. In an unpublished opinion filed earlier this year (B195762), we reversed judgment on the pleadings in that action on the ground that Norma has standing to pursue her own causes of action for wrongful death, breach of contract, and intentional infliction of emotional distress. We also concluded that Norma waived her right to bring any survivor causes of action, including an action for elder abuse under Welfare and Institutions Code section 15600 et seq., because she gave up all interest in Alfred's estate and assets when she entered into the settlement agreement.³

Disregarding the terms of the settlement agreement, Norma attempted to control and profit from assets in Alfred's estate. Norma recorded documents with the Los Angeles County Recorder's Office, the Clark County Recorder's Office in Las Vegas, and the Maricopa County Recorder's Office in Arizona, claiming to be Alfred's surviving spouse, the sole general partner of Borstein Partners, and claiming an interest in the assets of the Alfred J. Borstein trust.

² Appellant also filed a complaint (LASC No. BP091456) against Alice Ulman for "Misrepresentation in Giving False Information in the Death Certificate of Alfred J. Borstein." According to respondents, that complaint was "denied with prejudice." Appellant's motion for reconsideration was denied, and the order was affirmed on appeal. Remittitur issued June 1, 2006 (*Borstein v. Ulman* (Mar. 27, 2006, B184837) [nonpub. opn.]).

³ Under the terms of the settlement agreement, Norma retained only the right to live in Alfred's residence until a short period after his death, and to receive his Social Security benefits.

E. Injunction against Norma

In August 2006, the probate court issued a broad permanent injunction against Norma, declaring her filings relating to Borstein assets void and prohibiting her from contacting, collecting rent, maintaining any legal actions relating to, or interfering with the tenants of any properties owned by Borstein Partners, Borstein Management, or the trust. She was barred from acting on behalf of, holding herself out as, or using names or titles on behalf of Borstein Partners, Borstein Management, or the trust. All deeds, encumbrances, hypothecations, documents, filings, recordings or communications made by Norma and her agents, partners, successors, assigns or attorneys with respect to Borstein Partners, Borstein Management, or the trust were declared void. Norma was subsequently held in contempt for violating the preliminary injunction. In an unpublished opinion (*In re Norman Edwards Borstein on Habeas Corpus* (Feb. 27, 2008, B202813)),⁴ we granted Norma's petition for writ of habeas corpus as to counts VII through XIII of the contempt, but allowed execution of sentence as to counts I through VI.

F. Goswami's Role

Goswami describes himself as an assignee of Norma's, purporting to have acquired a percentage of her interests in the Borstein assets. He also says: "Goswami is simply a joinder of Norma Edwards Borstein" In November 2005, Norma executed a sale of her legal interest to Goswami, including a category labeled "property recovery." Beginning in December 2006, Goswami filed challenges to the settlement agreement, including a motion to strike the agreement; an ex parte application to set aside an order; a

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Inadvertently, in that opinion we said the conservatorship petition was brought by Alfred's children from a previous marriage, who had also obtained the permanent injunction against Norma. The conservatorship was instituted by Alfred's niece, Carol Stein, and his sister, Alice Ulman. It was Carol Stein, and two of the Borstein entities (Borstein Partners and Borstein Management), who brought the order to show cause re contempt against Norma.

motion to dissolve or set aside a temporary restraining order and permanent injunction issued against Norma; and a motion to vacate other orders.

G. Injunction Against Goswami

On May 30, 2007, Carol Stein filed an ex parte application for a temporary restraining order and order to show cause re preliminary injunction against Goswami in the conservatorship action. The court issued a broad temporary restraining order similar to the restraining order issued earlier against Norma. It prohibited Goswami from taking any action relating to the assets of Borstein Partners, Borstein Management, or the trust. Filings by Goswami with the secretaries of state in California, Arizona, Hawaii, and Nevada were declared void, as were all deeds, encumbrances, filings, and recordings relating to the Borstein assets and the specific real properties we have listed above. Goswami opposed the temporary restraining order and order to show cause, contesting the court's jurisdiction among other arguments.

On June 20, 2007, the court issued a broad permanent injunction against Goswami. It prohibits him from collecting rents from, maintaining legal actions relating to, or interfering with the tenants of properties owned by Borstein Partners, Borstein Management, or the Borstein Trust. Goswami was barred "[f]rom acting on behalf of, holding themselves out as, using the names of, using any titles relating to, filing documents of any kind or manner relating to or on behalf of Borstein Partners, Ltd., Borstein Management, LLC or the Alfred J. Borstein Trust or communicating with the agents, members, partners, trustees" of those entities. The injunction made permanent the order voiding Goswami's filings with the secretaries of state of California, Arizona, Hawaii and Nevada, and the corresponding County Recorder's Offices with respect to the Borstein entities. All deeds, encumbrances, hypothecations, documents, filings and recordings by Goswami, his agents, partners, successors, assigns or attorneys with respect to the Borstein entities and specified properties in California, Arizona, Nevada, and Hawaii were declared void. Goswami filed this timely appeal from the permanent injunction. Following oral argument, we vacated the submission of the case and ordered supplemental briefing on the issue of the court's jurisdiction.

DISCUSSION

I

Goswami claims he was not served with the order to show cause re permanent injunction. The order to show cause was issued by the trial court on May 30, 2007. In his opposition to the order to show cause, Goswami said he had received notice of the hearing on the temporary restraining order and order to show cause the day before the hearing. Goswami appeared at the hearing. He claimed that he did not receive a copy of the order to show cause, and so went to the court and got a copy from the file. This establishes that he had actual notice of the order to show cause.

II

The next argument by Goswami is that there was no cause of action against him in the conservatorship proceeding, and therefore no basis for issuing the injunction. In a related argument, he contends the conservatorship was terminated and therefore the court lacked jurisdiction to issue an injunction in that case. As we have seen, the probate court approved the terms of the settlement agreement entered into by Norma. That agreement expressly extends to “the benefit of and [is] binding upon the Parties to this Agreement and Stipulation and *their* respective heirs, beneficiaries, personal representatives, *successors, agents and assigns.*” (Italics added.)

The settlement agreement expressly states that the court shall retain jurisdiction to enforce its terms: “**13. ENFORCEMENT:** The Parties expressly agree that the Court may enter judgment consistent with the terms of this Stipulation and Agreement, and that *the Court shall retain jurisdiction pursuant to California Code of Civil Procedure § 664.6 to enforce this Agreement and Stipulation until its terms have been performed in full. In the event that an enforcement action becomes necessary, the prevailing Party shall be entitled to costs, including reasonable attorney’s fees, in addition to any other relief awarded.*” (Italics added.)

Because the parties expressly agreed that the court retained jurisdiction to enforce the terms of the agreement, the discharge of the conservator on February 9, 2006, did not

deprive the court of the jurisdiction to issue injunctive relief upon a violation of the terms of the agreement. The signatories to the settlement agreement, including Carol Stein, who instituted this action for injunctive relief against Goswami, are authorized to bring an enforcement action. Contrary to Goswami's arguments, no separate action was required. Goswami has repeatedly represented himself as Borstein's assignee. He is therefore bound by the terms of the settlement agreement and the court has jurisdiction to enforce it against him.

Goswami raises a related contention that the trial court was inconsistent in imposing an injunction against him while denying his motion to vacate an order issued on April 11, 2007. He cites the reporter's transcript of the May 30, 2007 hearing where the trial court denied his motion to vacate. It is unclear from that transcript what order Goswami sought to vacate. At the hearing, Goswami said that the April 11 order stated that he is not a party and did not have standing. The court told him: "You can't will yourself into a case and give yourself—and make yourself a party when you otherwise are not a party. The court does deny the motion to vacate." The court's docket provides no additional clarification. Since we are unable to determine the nature of the April 11, 2007 order, which is not in the clerk's transcript, Goswami has not demonstrated grounds for relief.

III

Goswami also argues that the court erred in issuing the injunctive order because Carol Stein did not prove her right of possession and ownership in the properties covered by the injunction.

In part, Goswami's argument that Stein had no right to obtain an injunction is yet another collateral attack on the settlement agreement itself. He claims that Stein and others took control of Alfred's properties criminally and through elder abuse. The settlement agreement is final and not subject to this collateral attack because Norma's appeal from the order approving the settlement was dismissed (*Stein et al. v. Borstein* (Oct. 27, 2005, B182129)).

The evidence established that Carol Stein is a cotrustee of the trust, and a member and general manager of Borstein Management. The settlement agreement states that all of Alfred's assets were deemed part of the Alfred J. Borstein Trust, which is the valid and operative estate plan for Alfred.

IV

Goswami argues the trial court lacks jurisdiction to issue orders regarding the rights to real estate located outside of California. This argument misses the point. The injunction is to enforce the terms of the settlement agreement. Norma gave up all her rights to Alfred's estate, wherever those assets might be located, in the settlement agreement. It expressly gives California courts continuing jurisdiction to enforce the agreement. Because the settlement agreement binds Norma's successors and assigns, it applies to Goswami.

V

Goswami also argues the trial court violated his constitutional right to protect his interest in real properties by issuing the injunction. The defect in this argument is that Goswami has no right to any property that is or was part of the Borstein estate. His sole claim is as assignee of Norma, who relinquished all her rights to these properties in the settlement agreement. Goswami has no constitutional right to file documents either in court or in other governmental offices regarding these properties.

VI

Goswami contends that it is contrary to California law to void real property recordings without a preponderance of the evidence showing the party seeking relief is likely to prevail in litigation to acquire title to the property. That showing was made here. Goswami, as assignee of Norma, has no interest in these properties because any interest Norma might have claimed was relinquished in the settlement agreement, which is now final.

VII

Without citation to evidence in the record, Goswami contends that it is respondents who are fraudulently and illegally conducting business involving properties

owned by the Borstein entities. The party raising an issue on appeal has the burden of providing citations to the record to direct us to the evidence supporting their argument. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) It is not the responsibility of this court to comb the appellate record for facts, or to conduct legal research in search of authority, to support the contentions on appeal. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) The contention is waived. (*Ibid.*)

VIII

Goswami repeatedly argues there is no evidence that he interfered with the operation of the Borstein entities, or that there is insufficient evidence to support the injunction. He also argues he is not responsible for Norma's conduct. The evidence establishes that Goswami repeatedly attempted to gain control over Borstein assets, through the courts, and otherwise.

On June 16, 2006, Norma executed a declaration stating that she was a general partner in Borstein Partners, and that she had added Goswami as a new general partner with a 65 percent interest in the assets and liabilities of the partnership.

On November 7, 2006, Goswami recorded a notice of amendment to Borstein Partners, Ltd. in Clark County, Nevada as to the parcels on Shadow Lane in Las Vegas, Nevada owned by Borstein Partners. That notice states that Norma had made Goswami a general partner in Borstein Partners with a 65 percent interest. This document was signed by Goswami. On November 16, 2006, Goswami recorded a "Notice of Amendment to Borstein Partners, Ltd." The same day he recorded the same document in the Maricopa County Recorder's Office in Arizona. This was after the court issued its injunction against Norma and her assigns on August 29, 2006.

According to a declaration by counsel for respondents in support of the ex parte application for the temporary restraining order, in late 2006, Norma and Goswami began filing various documents and partnership amendments with the Secretary of State of Nevada with respect to the Borstein Partners' property in Las Vegas, in violation of the injunction against Norma and her assigns.

Counsel for respondents declared that Norma and Goswami recorded, or caused to be recorded, various documents, including a deed of trust, with the Clark County Recorder's Office in violation of the August 29, 2006 injunction. According to him, Norma and Goswami proceeded to record, or cause to be recorded, the same documents in Arizona. Goswami has raised no evidentiary objection to this declaration.

““A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action . . . against a defendant and that equitable relief is appropriate.” [Citation.] The grant or denial of a permanent injunction rests within the trial court's sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.] The exercise of discretion must be supported by the evidence and, “to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, [we] review such factual findings under a substantial evidence standard.” [Citation.] We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge all reasonable inferences to support the trial court's order.’ (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 390.)” (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 872.)

We find no abuse of the trial court's discretion in issuing the injunction. Goswami had no rights to any of the properties or assets held by the Borstein entities. The purported assignment of Norma's rights was a nullity because she had released all of her interests by entering into the settlement agreement. Despite repeated rejection of his claims by the court, the evidence establishes that Goswami took various actions in an attempt to gain control or management of these assets. Respondents were entitled to injunctive relief.

In summary, Norma had no rights in assets of the Borstein entities to assign to Goswami. But as a purported assignee, Goswami was bound by the settlement agreement by which Norma relinquished her rights. That settlement agreement is final and not subject to collateral attack in the courts by either Goswami or Norma. Under the terms of the settlement agreement, the court had continuing jurisdiction to enforce its terms. The

exercise of its equitable powers to issue the injunction against Goswami to enforce the settlement agreement was not an abuse of discretion on this record.

DISPOSITION

The permanent injunction is affirmed. Respondents are to have their costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.